

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL RECEIVED

JAN 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

| | | |
|--|---|-----------------------|
| In the Matter of |) | |
| |) | MM Docket No. 97-234 |
| Implementation of Section 309(j) |) | |
| of the Communications Act |) | |
| -- Competitive Bidding for Commercial |) | |
| Broadcast and Instructional Television |) | |
| Fixed Service Licenses |) | |
| |) | |
| Reexamination of the Policy |) | GC Docket No. 92-52 |
| Statement on Comparative |) | |
| Broadcast Hearings |) | |
| |) | |
| Proposals to Reform the Commission's |) | GEN Docket No. 90-264 |
| Comparative Hearing Process to |) | |
| Expedite the Resolution of Cases |) | |

**COMMENTS OF THE ASSOCIATION OF FEDERAL COMMUNICATIONS
CONSULTING ENGINEERS (AFCCE)**

The Association of Federal Communications Consulting Engineers (AFCCE) is an organization that includes members who are registered professional engineers engaged in the practice of consulting engineering or who are communications company engineering executives. The AFCCE was founded in 1948 and has been pleased and honored to share its professional experience and insight with the Federal Communications Commission (FCC).

In the above-captioned proceeding, the FCC proposes to award most mutually exclusive licenses for broadcast services by competitive bidding, as directed by Congress in the Balanced Budget Act of 1997.¹ Although the Commission's Notice of Proposed Rule Making ("Notice") solicits comments on a wide range of issues, AFCCE's concerns herein are concentrated in one narrow area. The Commission has proposed to defer the filing of the engineering portion of an

¹ Pub. L. No. 105-33, 111 Stat. 251 (1997).

application for new and major change facilities until after the auction is complete and a tentative permittee is selected. As demonstrated below, this proposal could be harmful to broadcast applicants, and is likely to reduce overall auction revenues.

I. The Commission Must Require the Filing of Complete Engineering Data With Short-Form Applications

As proposed in the Notice, a successful applicant for a broadcast license would be required to submit two applications. Each auction participant initially would file a "short form" application, on FCC Form 175, to indicate its intent to participate in the auction for a particular license.² After the auction is held, the auction winner would file a "long form" application on FCC Form 301, 346, or 349, as appropriate.³

FCC Form 175 requests little information of the applicant beyond its name, address, and the channels being applied for. Recognizing that in the case of AM, LPTV, and television and FM translator applications, this information is insufficient to determine whether an application is mutually exclusive with another simultaneously filed application, the Commission has tentatively decided that such applicants must supplement Form 175 with the "engineering data necessary to determine mutual exclusivity."⁴ However, under the Commission's proposal, FM applications would be submitted with no engineering information at all.⁵

The FCC seeks comment on this proposal.⁶ The Commission apparently is concerned that pre-auction engineering review of applications that may eventually lose in the auction will

² Notice at ¶ 65.

³ *Id.* at ¶ 76.

⁴ *Id.* at 65.

⁵ *Id.* ("Applications specifying the same vacant FM allotment(s) would be mutually exclusive, and no supplemental engineering data would be necessary to make this determination.").

⁶ *Id.* at ¶ 67.

be unnecessarily burdensome and wasteful.⁷ The Commission also seeks comment on an alternative proposal, under which it would review the engineering data submitted with an application only to the extent necessary to identify any unresolvable technical problems, and return such applications as unacceptable.⁸ Even under its alternative proposal, however, the Commission would not review any engineering submitted in connection with FM applications.⁹ Again, the Commission's concerns with this alternative proposal relate to its potential for administrative burden and delay.¹⁰ Comment is sought on this proposal as well.¹¹

While AFCCE appreciates the Commission's desire to eliminate burdensome paperwork and avoid unnecessary review, the Commission must at least require the submission of complete engineering data with each short-form auction application and protect each short-form applicant from interference from subsequently filed applications. Unless applicants' site preferences as disclosed in their engineering submissions are protected and "cut-off" from subsequently filed applications, each auction participant will be exposed to an unacceptable and unnecessary risk that at the conclusion of the auction its site will no longer be usable.

Auction participants will likely conduct extensive investigations of potential transmission sites before deciding whether to apply and bid for a particular allotment. The results of such investigations will become crucial determining factors in deciding whether to bid and how much to bid. For example, signal coverage will vary from site to site, and an applicant with a site that maximizes coverage will bid more for a license, other things being equal, than applicants whose

⁷ *Id.* (noting that applicants should "file an appropriate, but not a burdensome, amount of information").

⁸ *Id.* at ¶ 70.

⁹ *Id.* (pre-auction engineering would be reviewed "primarily in the AM, LPTV, and television and FM translator services").

¹⁰ *Id.* ("this approach[] could slow the auction process").

¹¹ *Id.*

sites offer inferior coverage. The amount of the bid will also depend on anticipated construction costs, which may in turn depend upon particular site characteristics such as whether an existing tower can be used.

The site chosen by an applicant upon which it bases its auction decisions must be protected during the auction process. Under the Commission's proposal for FM applications, only the reference point for the allotment would be protected. However, the reference point and an applicant's desired location may be separated by a considerable distance. The interim period between filing a short-form application and completing the auction may be six months or longer, providing ample time for a conflicting application or rule making proposal to be filed. For example, an adjacent-channel licensee in a nearby community could file for a minor site change the day before the completion of the auction, which could preclude the eventual auction winner from filing for its preferred site. Nevertheless, the winning bidder would be held to its bid and expected to pay.

While the Commission could require applicants to accept this risk after full disclosure, the Commission must recognize that imposing this risk on broadcast applicants is likely to reduce total auction revenues, as bidders will tend to compensate for the added risk through lower bids.

It is not enough to submit coordinates only. Instead, the entire engineering proposal should be submitted because the site may be contour protected¹² or seek a short spacing waiver¹³ or demonstrate an alternative city grade contour showing.¹⁴ The FCC must be able to review these proposals and dismiss those that are facially defective, because illegitimate proposals

¹² See 47 C.F.R. § 73.215.

¹³ See 47 C.F.R. §§ 73.207, 73.215(e).

¹⁴ See Tech Note 101/Longley Rice

should not be able to preclude legitimate applications for other communities. With respect to applications for AM stations, the engineering analysis will be more complex and must be submitted in its entirety to be entitled to protection.

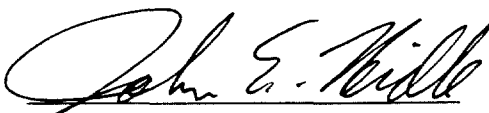
The Commission invites a particularly inequitable outcome in the case of applications already on file but submitted after July 1, 1997. For these applicants, the long-form engineering portion is already on file with desired sites protected. The Commission has invited comment on whether it should reopen these allotments to new applicants who would file on short form.¹⁵ Clearly, it should not reopen these allotments unless new applicants also file long-form engineering data. Otherwise, the prior-filed applications would have their sites protected while new applications would not. This would give the prior-filed applications an unfair advantage in bidding.

II. Conclusion

For the foregoing reasons, AFCCE respectfully requests that the Commission require the submission of complete engineering data with each short-form application, and protect the site preferences of short-form applicants from interference by subsequently filed applications.

Respectfully submitted,

ASSOCIATION OF FEDERAL
COMMUNICATIONS CONSULTING
ENGINEERS

By: 
John E. Hidle, P.E., President

January 26, 1998

¹⁵ Notice at ¶ 42.